

1 TIMOTHY S. CORY, ESQ.

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Nevada Bar No. 1972

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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 In re:

9 KAREN BETH LIPTON,

Debtor.

BK-S-08-19178-MKN

Chapter 7

10
11 TIMOTHY S. CORY, Chapter 7 Trustee,

12 Plaintiff,

13 v.

14 KAREN BETH LIPTON,

15 Defendant.

Adv. Proc. No. 08-01386-MKN

16 Date: 05/27/09

Time: 2:30 pm

17 **MOTION FOR JUDGMENT ON THE PLEADINGS**

18 Timothy S. Cory, Chapter 7 Trustee of the above-captioned bankruptcy estate and Plaintiff
19 in the above-captioned adversary proceeding (the "Trustee"), by and through his counsel, Durham
20 Jones & Pinegar, hereby files this motion for judgment on the pleadings pursuant to Rule 12(c) of
21 the Federal Rules of Civil Procedure, as made applicable herein by Rule 7012(b) of the Federal
22 Rules of Bankruptcy Procedure. In support of this Motion, the Trustee states as follows:
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1 **I. FACTUAL BACKGROUND**

2 Karen Beth Lipton (the “Debtor”) filed a voluntary petition under Chapter 7 of Title 11 of the
3 United States Code (the “Bankruptcy Code”) on August 15, 2008 (the “Petition Date”). In her
4 bankruptcy schedules, the Debtor stated that her personal residence was 2921 Lotus Hill Drive, Las
5 Vegas, Nevada (the “Real Property”), and that she owned the Real Property.

6 At her meeting of creditors held on September 24, 2008, the Debtor acknowledged: (a) that on
7 or about March 25, 2008, she had transferred the real Property to the Karen Lipton Trust; (b) that she
8 sold the Real Property in July 2008; and (c) that she received approximately \$209,000.00 from the
9 sale of the Real Property. The Debtor’s transfer of the Real Property to her trust, the Debtor’s sale of
10 the Real Property, and the Debtor’s receipt of approximately \$209,000.00 from such sale were not
11 disclosed anywhere in the Debtor’s Statement of Financial Affairs or Schedules. At her meeting of
12 creditors, the Debtor further testified that the proceeds of the sale of the Real Property were in the
13 form of cash and that she had \$200,000.00 in cash at that time. The Debtor failed to turnover the
14 \$200,000.00 in cash to the Trustee despite repeated requests. On October 2, 2008, this Court entered
15 an order directing the Defendant to “immediately turnover \$200,000.00 to Timothy S. Cory, Chapter
16 7 Trustee” (the Turnover Order”). The Defendant has failed to comply with the Turnover Order.

17 On November 24, 2008, the Trustee filed a complaint (the “Complaint”) to deny the Debtor’s
18 discharge pursuant to section 727 of the Bankruptcy Code. On or about December 16, 2008, the
19 Debtor filed a letter in answer to the Complaint in which she admitted that she sold her residence
20 prior to her bankruptcy filing, but claimed that the proceeds of that sale “are exempt under the
21 homestead act.”

II. LEGAL ARGUMENT

A. Standard For Judgment On The Pleadings

Rule 12(c) of the Federal Rules of Civil Procedure provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Fed. R. Civ. Pro. 12(c) (2009). A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law. Fairbanks North Star Borough v. U.S. Army Corps of Engineers, 543 F.3d 586, 591 (9th Cir. 2008). In deciding a Rule 12(c) motion, courts apply the same standard of review as that applicable to a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). When courts decide a motion under Rule 12, they “may consider the facts alleged in the complaint, documents attached to the complaint, documents relied upon but not attached to the complaint when authenticity is not contested, and matters of which the court takes judicial notice.” Soto v. Diakon Logistics (Delaware), Inc., 2009 WL 690178 (S.D. Cal. March 13, 2009).

B. Judgment On The Pleadings Is Proper Because The Uncontroverted Allegations In The Complaint Establish That The Debtor Is Not Entitled To A Discharge.

Section 727 of the Bankruptcy Code provides, in relevant part, that the Court shall grant the debtor a discharge unless:

- The debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the debtor, within one year before the date of the filing of the petition; or property of the estate, after the date of the filing of the petition. 11 U.S.C. § 727(a)(2).
- The debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and

1 papers, from which the debtor's financial condition or business transactions
2 might be ascertained, unless such act or failure to act was justified under all of
the circumstances of the case. 11 U.S.C. § 727(a)(3).

- 3 • The debtor knowingly and fraudulently, in or in connection with the case made
4 a false oath or account. 11 U.S.C. § 727(a)(4)(A).
- 5 • The debtor knowingly and fraudulently, in or in connection with the case
6 withheld from an officer of the estate entitled to possession under this title, any
recorded information, including books, documents, records, and papers, relating
7 to the debtor's property or financial affairs. 11 U.S.C. § 727(a)(4)(D).
- 8 • The debtor has refused, in the case to obey any lawful order of the court, other
than an order to respond to a material question or to testify. 11 U.S.C. §
727(a)(6)(A).

9 The Trustee made allegations in the Complaint which, if taken as true, entitle the trustee to a
10 judgment that the Debtor should not receive a discharge under each of the above-cited subsections of
11 Section 727. Specifically, the Complaint alleged that the Debtor transferred, removed, or concealed,
12 or permitted to be transferred, removed, or concealed, \$200,000.00 in cash within one year prior to
13 the Petition Date and after the Petition Date with intent to hinder, delay, or defraud a creditor or an
14 officer of the estate charged with custody of property under Title 11. The Complaint also alleged that
15 the Debtor concealed, destroyed, mutilated, falsified, or failed to keep or preserve books, documents,
16 records, or papers regarding the \$200,000.00 and that Debtor's actions with respect to the records
17 relating to the \$200,000.00 were not justified under all of the circumstances of this case. Also, that
18 the Debtor knowingly and fraudulently, in connection with this case, withheld from the Trustee
19 recorded information relating to her property, including the \$200,000.00 that she admitted under oath
20 to possessing at the time of the meeting of creditors. The Debtor filed an answer that did not deny
21 any of these allegations. The allegations should therefore be taken as true and judgment on the
22 pleadings should be granted.

1 In addition, the Complaint alleged that the Debtor knowingly and fraudulently, in connection
2 with this case, made false oaths or accounts: (1) by stating on her bankruptcy schedules and in her
3 meeting of creditors that the Real Property was her residence on the Petition Date; (2) by failing to
4 include the \$200,000.00 on her bankruptcy schedules; (3) by failing to disclose in her Statement of
5 Financial Affairs the prepetition transfer of the Real Property of the Debtor's trust; and (4) by failing
6 to disclose in her Statement of Financial Affairs the prepetition sale of the Real Property. Not only
7 did the answer filed by the Debtor not deny these allegations, but the Debtor admits that the residence
8 was sold prepetition with the statement: "I sold my primary residence on July 2nd, 2008 and I filed
9 for bankruptcy on August 15th 2008."

10 Finally, the Complaint alleged that the Debtor has refused to obey the Turnover Order, which
11 is a lawful order of this Court and that the Turnover Order is not an order to respond to a material
12 question or to testify. This fact is not denied in the Debtor's answer and, in fact, is clear from the
13 record in the Debtor's bankruptcy case as this Court has ordered that the Debtor is in contempt of this
14 Court for failing to comply with the Turnover Order.

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1 **III. CONCLUSION**

2 Taking all the allegations of the parties as true, it is clear that the Debtor sold her home prior
3 to the petition date and has refused to turn over property of the bankruptcy estate. Judgment on the
4 pleadings is therefore appropriate.

5 DATED this 24th day of April, 2009.

6 DURHAM JONES & PINEGAR

7
8 /s/ Jason C. Farrington /
9 Timothy S. Cory
10 Jason C. Farrington
11 8831 West Sahara Avenue
12 Las Vegas, Nevada 89117

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24 Attorneys for the Debtor